

E-FILED on 4/16/2008

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DWIGHT WATSON; DANIEL FARIAS;
LAUREN WATSON; and NICOLE WATSON,

Plaintiffs,

v.

GLENN ALBIN; DAVID MENDEZ; FRANK
ST. CLAIR; MIKE D'ANTONIO; MIKE
RUBINO; SANTA CLARA COUNTY;
STATE OF CALIFORNIA, and DOES 1-50,

Defendants.

No. C-06-07767 RMW

ORDER DENYING AGENT ALBIN'S AND
AGENT RUBINO'S MOTIONS FOR
SUMMARY JUDGMENT

[Re Docket Nos. 68, 70]

This case arises from a probation search conducted by the Santa Clara County Specialized Enforcement Team ("SCCSET"). The plaintiffs are Dwight Watson and his three children: his stepson Daniel Farias and his daughters Lauren and Nicole Watson. The only remaining defendants in the case are agents Glenn Albin, David Mendez, Mike D'Antonio, and Mike Rubino.¹ Agents

¹ The court granted the State of California's motion to dismiss on Eleventh Amendment grounds. *See* Docket No. 32, C-06-07767-RMW (N.D. Cal. May 24, 2007). The plaintiffs have since stipulated to dismiss their case against Santa Clara County and Frank St. Clair. *See* Docket Nos. 110, 111.

1 Albin and Rubino move for summary judgment on various claims directed against them. Agents
 2 Mendez and D'Antonio do not move for summary judgment. The plaintiffs oppose the motions.
 3 The court has read the papers and considered the arguments of counsel. For the reasons set forth
 4 below, the court denies the motions for summary judgment.

5 I. BACKGROUND

6 A. Events Leading Up to the Incident at the Watson Home

7 Over the course of October 2005, SCCSET agents believed that Curtis Farias was selling
 8 narcotics out of a home at 74 Decorah Lane in Campbell, California ("the Watson home").
 9 See Docket No. 93, Decl. of K.C. Allan Waldron ("Waldron Decl."), Ex. C at 6:8-9. Agent David
 10 Mendez discovered that Mr. Farias had two probation grants for narcotics violations. *Id.*, at 6:9-11.
 11 Accordingly, he held an operation briefing on October 25, 2005, which included Agents Albin,
 12 D'Antonio, Rubino, and St. Clair. *Id.*, at 6:12-13. In the briefing, the agents discussed who lived in
 13 the home and recognized that it was a multi-generational home and that there would be children
 14 present. Waldron Decl., Ex. D at 28:2-12.

15 After the briefing, Agents Rubino and D'Antonio surveilled the Watson home around 5:15 in
 16 the evening. *Id.*, at 6:17-18, 24-25; see also Docket No. 68-2, Decl. of Mike Rubino ¶ 4 ("Rubino
 17 Decl."). Upon seeing Curtis Farias leave around 6:50, Agents Rubino and D'Antonio followed,
 18 stopped, and detained him. Waldron Decl., Ex. C at 6:18-25; Rubino Decl. ¶ 5. Following Curtis
 19 Farias' arrest, the agents held a field briefing before conducting the search. See Waldron Decl., Ex.
 20 E at 69:1-5. The briefing covered information gleaned from Curtis Farias about who would be in the
 21 house and specifically covered that children would be present. *Id.* at 69:20-70:8. Based on their
 22 questioning of Curtis Farias, the SCCSET believed there would be nine people inside the house and
 23 that they would find methamphetamine on the premises. Waldron Decl., Ex. G at 2:18-20.

24 The SCCSET agents were clad in "full raid gear," consisting of blue jeans and a black shirt
 25 and vest with the word "POLICE" on the front and back. Rubino Decl. ¶ 6. The agents approached
 26 the house and detained two young men who were standing in front of the garage door. Waldron
 27 Decl., Ex. C at 6:27-30. Agent Mendez then repeatedly knocked on the front door, shouting "Police
 28

1 offers, probation search open the door!" *Id.* at 6:30-32. Lauren Watson opened the door within ten
2 seconds, at which point Agent Mendez entered the home and escorted her to the living room. *Id.* at
3 6:32-36.

4 **B. What Happened Inside the Watson Home?**

5 **1. Agent Mendez's Report**

6 Agent Mendez encountered Margaret Farias (Mr. Watson's alleged common law wife) as he
7 entered the hallway and ordered her to approach. Waldron Decl., Ex. C at 6:38-7:2. As she did so,
8 Mr. Watson emerged from the master bedroom and shouted "what the hell is going on?" *Id.* at 7:3-5.
9 Mr. Watson passed Margaret and continued to question Agent Mendez, until he blocked the entry to
10 the house. *Id.* at 7:6-10. At this point, Agent Albin grabbed Mr. Watson's left arm and forcibly
11 pulled him into the kitchen. *Id.* at 7:10-14.

12 Mr. Watson yelled at Agent Albin and jerked his arm away from him, looking as though he
13 would hit Agent Albin. *Id.* at 7:15-18. Meanwhile, Daniel Farias emerged from a room and into the
14 hallway, shouted "What are you doing that's my dad!" and ran toward Agent Albin and Mr. Watson.
15 *Id.* at 7:20-22. Agent St. Clair grabbed Daniel Farias to prevent him from interfering and physically
16 detained him on the hallway floor. *Id.* at 7:22-25. Agent Mendez then helped Agents Albin and
17 Rubino with the detention of Mr. Watson. *Id.* at 7:25-27.

18 Agent Mendez's report states that Agent Albin's right wrist, elbow, and shoulder were
19 injured, and that an x-ray of Agent Albin's wrist revealed a possible spiral fracture. *Id.* at 7:29-34.
20 Mr. Watson obtained "minor injury to his mouth and a complaint of pain to his back." *Id.* at 7:36-
21 37. Mr. Watson complained about pain to his back, but refused medical aid from fire department
22 members and refused to be transported by paramedics. *Id.* at 7:36-8:4.

23 Agent Mendez then searched the home. *Id.* at 8:8. In Curtis Farias's bedroom, he found
24 assorted drug paraphernalia, two small ziplock baggies of marijuana, various narcotic pills, two
25 scales, and other potential contraband. *Id.* at 8:13-37.

26 **2. Agent Albin's Declaration and Report**

Agent Albin states that once the SCCSET entered the Watson home, Mr. Watson was "visibly angry and hostile" and repeatedly yelled "what the hell is going on." Docket No. 71, Decl. of Glenn Albin ¶ 10(a) ("Albin Decl."). Agent Albin yelled "probation search" and ordered Mr. Watson to approach him. *Id.* Mr. Watson continued to yell as he approached him and yelled "I ain't on probation." *Id.* Due to the close confines of the hallway and Mr. Watson's baggy clothing, Agent Albin did not feel safe and feared that Mr. Watson might have a weapon in his waistband. *Id.* ¶ 10(b). Agent Albin therefore grabbed Mr. Watson by his left arm once he was within two or three feet, turned him around, grabbed his right arm and told him to stand still so he could lead Mr. Watson out of the hallway and allow the search to proceed. *Id.* ¶ 10(c). Mr. Watson pulled his arm away and became combative, saying "What are you doing? I am not on probation" and "Get your hands off of me, I am not on probation." *Id.* ¶ 10(d). Mr. Watson then swung his left arm in an attempt to hit Agent Albin, leading Agent Albin to grab Mr. Watson by his right armpit and force him to the kitchen floor, face down. *Id.* ¶ 10(e). While on the floor, Mr. Watson struggled, kicked his legs, yelled and screamed while another agent helped Agent Albin secure and handcuff him.

Agent Albin states that he had no contact with Daniel Farias or Lauren or Nicole Watson. *Id.* ¶ 8.

Agent Albin's contemporaneous narrative report is consistent with his declaration, though it adds further detail about the struggle and the aftermath. *See* Waldron Decl., Ex. G at 4:4-5:12. When Mr. Watson hit the kitchen floor, the fall trapped both of his hands and Agent Albin's left arm beneath Mr. Watson's body. *Id.* at 4:8-9. To free his left arm and Mr. Watson's hands, Agent Albin punched Mr. Watson's left shoulder and back four to six times. *Id.* at 4:9-13. Blood appeared on the floor, and Agent Albin believed it came from Mr. Watson's mouth. *Id.* at 4:13-14. Eventually, Mr. Watson was detained and, in total, the struggle last around five minutes. *Id.* at 5:9-10. Agent Mendez then photographed the scene, Mr. Watson, and Agent Albin. *Id.* at 5:10-11.²

3. Agent Rubino's Declaration

² Two of the photographs are in the record. *See* Waldron Decl., Exs. I, J. One shows Mr. Watson with a bloodied face. *Id.* at Ex. I. The other shows a tile floor with blood spattered on it. *Id.* at Ex. J.

1 Agent Rubino states that he was one of the last agents to enter the house. Rubino Decl. ¶ 10.
2 He and Agent D'Antonio passed through the kitchen and secured the family room, where they
3 contacted an elderly couple – Ann and Earnest Farias. *Id.* ¶ 11. Agent Rubino identified himself
4 and the purpose of the search. *Id.* ¶ 12.

5 While in the family room, he heard noise from the kitchen. *Id.* ¶ 13. He entered the kitchen,
6 where he saw Mr. Watson on the floor fighting with Agent Albin. *Id.* Agent Rubino helped Agent
7 Albin handcuff Mr. Watson. *Id.* ¶ 13. Agent Rubino states that while he was in the family room, he
8 does not know what happened in the kitchen or in the entry hallway. *Id.* ¶ 14. He also states that he
9 had no contact with Daniel Farias or Lauren Watson. *Id.* ¶ 15.

10 **4. Dwight Watson's Declaration**

11 Dwight Watson states that he never tried to "hit, elbow, or otherwise resist" any officer
12 during the search. Docket No. 91, Decl. of Dwight Watson ¶ 3. Mr. Watson was suffering from "an
13 excruciatingly painful back condition" at the time such that it took him about twenty seconds to walk
14 the ten feet from his room to where Agent Albin was standing. *Id.* ¶¶ 5, 6. Mr. Watson did not have
15 any gun or weapon. *Id.* ¶ 7. In his deposition, Mr. Watson testified that the only thing he said to the
16 officers was "you must be here for Curt." *See* Waldron Decl., Ex. A at 58:2-8; 59:8-13. He stated
17 that he did not yell at the officers. *Id.*, Ex. A at 60:10-17.

18 **C. The Prosecution of Dwight Watson**

19 Mr. Watson was charged with resisting arrest. Watson Decl. ¶ 8. A jury acquitted him on all
20 counts. *Id.*

21 **D. The Filing of This Lawsuit**

22 Prior to filing this lawsuit, the plaintiffs made demands on State of California, Santa Clara
23 County, and the City of Campbell. *See* Docket No. 1, Compl. ¶ 5. The plaintiffs did not make a
24 demand on the City of San Jose. *See* Docket No. 72, Decl. of James Brennan, ¶¶ 4-6. When Agent
25 Albin filed his answer to the complaint, he asserted that the plaintiffs failed to comply with
26 California's claims filing requirements. *See* Docket No. 26, Answer of Glenn Albin, at p. 9 (Mar.
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27, 2007). Agent Albin admitted that he was a member of SCCSET, but did not reveal that he was a member of the San Jose Police Department. *See id.* ¶ 10; *compare with* Compl. ¶ 10.

II. ANALYSIS

A. Mr. Watson's False Arrest Claims Against Agents Albin and Rubino

Agent Albin moves for summary judgment on Mr. Watson's claim section 1983 claim for false arrest, arguing that he is entitled to qualified immunity because he reasonably believed there was probable cause for arresting Mr. Watson for resisting arrest. Mr. Watson points out that this may be so – if the SCCSET agents' versions of what happened inside the Watson home are true. Mr. Watson has introduced evidence that he never yelled at the officers, that he did not physically resist Agent Albin, and that he was in too much pain from his back injury to have put up a fight. Agent Albin argues that the "tense, fast moving events" of the SCCSET raid made Agent Albin's actions reasonable. This is possible. Indeed, the SCCSET raid began by detaining two youths (who were not part of Mr. Watson's family) loitering in front of the garage and netted a wide variety of contraband and drug paraphernalia from Curtis Farias' room. On the other hand, the evidence taken in the light most favorable to Mr. Watson suggests that Mr. Watson greeted the agents by calmly stating "you must be here for Curt," that he never raised his voice, and that as he was forced to the ground and punched in the shoulder, he never resisted. Under those circumstances, Agent Albin's arrest of Mr. Watson for resisting arrest would not be reasonable; indeed, it would have been "plainly incompetent" or a knowing violation of constitutional law. *Spiegel v. Cortese*, 196 F.3d 717, 723 (7th Cir. 2000) (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)). The jury, not the court, must determine which version of events is the truth. *Wall v. County of Orange*, 364 F.3d 1107, 1110 (9th Cir. 2004).

Agent Rubino similarly moves for summary judgment on Mr. Watson's section 1983 claim for false arrest based on qualified immunity. The only evidence bearing on Agent Rubino's role in the incident is his admission that he helped Agent Albin handcuff Mr. Watson. As discussed regarding Agent Albin's actions, if Mr. Watson's version of events is true, the SCCSET agents had no reason to physically subdue and handcuff Mr. Watson and Mr. Watson did nothing to resist the

agents. Agent Rubino cites to *Dawson v. City of Seattle*, 435 F.3d 1054 (9th Cir. 2006), where the Seattle Police detained the tenants for a boardinghouse for two hours while the house was searched for pest infestations. The Ninth Circuit there held that a detention of a building's occupants incident to a lawful search is reasonable, but that the government does not have "unfettered authority to detain a building's occupants in any way they see fit." *Id.* at 1066. To be sure, SCCSET was justified in detaining the Watson family in the living room during Agent Mendez's search of the house. *Accord id.* at 1068 ("[I]t was reasonable to assemble tenants in a suitable place at the earliest practical opportunity in order to facilitate the inspection and its completion.").

But interpreting the evidence in the light most favorable to Mr. Watson compels the finding that his detention was not similarly justifiable. Agent Albin wrestled Mr. Watson to the ground despite Mr. Watson's compliance, and Agent Rubino assisted in handcuffing him despite Mr. Watson's continued lack of resistance and complaints of pain. The SCCSET agents then arrested him for resisting arrest. If proven, this is not a simple detention incident to a search. Instead, it is more analogous to the unreasonable detention described in *Tekle v. United States*, 511 F.3d 839 (9th Cir. 2007), where an eleven-year old-boy was handcuffed and held at gunpoint while federal agents searched his home to arrest his father. While the search in this case had the potential to be dangerous, the evidence submitted by Mr. Watson portrays a calm home invaded by special agents despite having already arrested the person believed to be dealing drugs and knowing that the house was occupied by children and elderly adults. Under these circumstances, there is a triable issue as to whether Agent Rubino acted reasonably in assisting Agent Albin in arresting Mr. Watson.³

B. Malicious Prosecution⁴

Agent Albin also moves for summary judgment on Mr. Watson's section 1983 claim of malicious prosecution arising out of Mr. Watson's prosecution for resisting arrest. "Filing of a

³ Because the court has found that there are triable issues of fact regarding the reasonableness of Agent Rubino's conduct, the court similarly cannot grant summary judgment on Mr. Watson's state law claim under California Civil Code section 52.1.

⁴ While the complaint accuses Agent Rubino of malicious prosecution, the plaintiffs no longer assert such a claim against Agent Rubino.

1 criminal complaint immunizes investigating officers . . . from damages suffered thereafter because it
 2 is presumed that the prosecutor filing the complaint exercised independent judgment in determining
 3 that probable cause for an accused's arrest exists at that time." *Smiddy v. Varney*, 665 F.2d 261, 266
 4 (9th Cir. 1981). The presumption may be rebutted if, for example, it is shown that the investigating
 5 officers knowingly submitted false information to the prosecutor. *Id.* at 266-67.

6 In this case, Agent Albin prepared a report describing the events leading to Mr. Watson's
 7 arrest for resisting arrest and an affidavit to support charging Mr. Watson with resisting arrest. *See*
 8 Waldron Decl., Exs. G, N. In both documents, Agent Albin describes how Mr. Watson became
 9 agitated, yelled, and fought as Agent Albin tried to subdue him. Mr. Watson has testified that these
 10 statements are false, as well demonstrated various inconsistencies in the agents' recount of the
 11 struggle. If Mr. Watson's evidence is believed, it follows that Agent Albin likely perjured himself in
 12 preparing an affidavit to charge Mr. Watson with resisting arrest.

13 Agent Albin correctly points out that malicious prosecution claims are generally not
 14 cognizable under section 1983. *Bretz v. Kelman*, 773 F.2d 1026, 1031 (9th Cir. 1985) (en banc).
 15 Such claims only fall under section 1983 if the prosecution was intended "to deprive a person of
 16 equal protection of the laws or . . . otherwise intended to subject a person to a denial of
 17 constitutional rights." *Id.* It appears that incarceration is a sufficient denial of the constitutional
 18 right to liberty to permit this type of malicious prosecution claim under section 1983. *See id.*;
 19 *Blankenhorn v. City of Orange*, 485 F.3d 463, 483-84 (9th Cir. 2007) (reversing district court's
 20 dismissal of malicious prosecution claim under section 1983 where plaintiff introduced evidence
 21 suggesting that he did not resist arrest). Accordingly, the court cannot grant summary judgment
 22 because Mr. Watson has rebutted the presumption of prosecutorial independence by producing
 23 evidence that the Agent Albin's reports that Mr. Watson resisted arrest are knowingly false.

24 C. The Claims Presentation Requirement

25 California law requires a plaintiff to present its claims against a government employee to the
 26 employing entity before allowing suit. Cal. Gov. Code §§ 950.2, 950.6. In this case, the plaintiffs
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1 made timely claims on the State of California, County of Santa Clara, and City of Campbell, but that
2 plaintiffs have never made a claim on the City of San Jose, Agent Albin's employer.

3 The plaintiffs invoke California Government Code section 950.4, a statutory exception to
4 section 950.2. As the statute is not a model of clarity, it is reproduced in its entirety with line breaks
5 added to illustrate the relationship between the clauses:

6 A cause of action against a public employee or former public employee is not barred by
7 Section 950.2 if the plaintiff pleads and proves that he did not know or have reason to
8 know,

9 within the period for the presentation of a claim to the employing public
10 entity as a condition to maintaining an action for such injury against the
11 employing public entity,

12 as that period is prescribed by Section 911.2 or by such other claims
13 procedure as may be applicable,

14 that the injury was caused by an act or omission of the public entity or by an act or
15 omission of an employee of the public entity in the scope of his employment as a public
16 employee.

17 A first point worth noting is that section 950.4 refers to *the* employing public entity, not *an*
18 employing public entity. *See Moore v. Morhar*, 65 Cal. App. 3d 896, 902 (1977) (noting that section
19 950.4 requires knowledge or reason to know regarding "the specific public entity chargeable with
20 the harm"). The difference is significant in cases like this where the plaintiff is aware that they have
21 been harmed by the government, but not aware of the specific entity that has harmed them. In such
22 cases, section 950.4 still applies to excuse a plaintiff's failure to file a claim if the plaintiff lacked
23 knowledge or reason to know the specific entity that harmed them.

24 A second feature of section 950.4 is that it requires the plaintiff to prove that he "did not
25 know or have reason to know" that his injury was caused by the specific public entity. The law
26 therefore requires a plaintiff to prove that he exercised reasonable diligence in ascertaining the facts
27 regarding his injury. *Moore v. Morhar*, 65 Cal. App. 3d 896, 902 (1977); *see also* 1 CALIFORNIA
28 GOVERNMENT TORT LIABILITY PRACTICE § 5.63 (4th ed. 2008). In *Moore*, the plaintiff was injured
by an allegedly defective sidewalk. *Id.* The plaintiff believed that her injury occurred within city
limits, but in fact, the curb was just outside city limits and the county was responsible. *Id.* The
California Court of Appeal affirmed the trial court's dismissal because the plaintiff was not

1 reasonably diligent in determining who caused her injuries, for example, she could have checked a
2 map to determine where her injuries occurred. *Id.*

3 Agent Albin argues that the plaintiffs were not reasonably diligent in failing to discover that
4 he worked for the San Jose police department. Unlike in *Moore*, the plaintiffs could not determine
5 which public entity should be served with a claim by simply looking at a map. All of the reports
6 available to the plaintiffs indicate that Agent Albin was a SCCSET agent and did not reveal that he
7 was employed by the San Jose police department. Tellingly, Agent Albin does not explain how the
8 plaintiffs could have figured out he worked for San Jose, as opposed to Santa Clara County. Based
9 on the record before the court, the plaintiffs have introduced evidence that there is a triable issue of
10 fact as to whether the plaintiffs have met the reasonable diligence standard.

11 What is unclear is what effect section 950.4 has on plaintiffs' claims if it applies. Plaintiffs
12 argue that if they lacked knowledge of the specific public entity that caused their injury during the
13 initial six-month window for presenting a claim,⁵ they are excused from the claim filing requirement
14 in its entirety. To be sure, the court in *Moore* stated that "a claimant who becomes chargeable with,
15 or acquires, knowledge under section 950.4 during the period in which a *late claim* could be filed,
16 may not be barred from proceeding against a public employee, even though his claim against the
17 employing public entity is barred." *Moore*, 65 Cal. App. 3d 901-02 (emphasis in original) (footnotes
18 omitted). The plaintiffs interpret this language to suggest that a plaintiff who lacks knowledge or
19 reason to know during the initial six-month claims period *never* needs to submit a claim to the
20 employing public entity. This interpretation appears to be shared by the leading treatise in the area.
21 *See* 1 CALIFORNIA GOVERNMENT TORT LIABILITY PRACTICE § 5.63 (4th ed. 2008).

22 Overlooked by the plaintiffs and the treatise, however, is the footnote in *Moore* qualifying
23 the court's quoted statement:

24 Although this seems to give an unwarranted procedural advantage to the claimant against
25 a public employee, Van Alstyne reasons as follows: "... since the ground of the late claim
26 application ordinarily would be one for which broad discretion is vested in the trial court,
such as disability (see § 8.31) or inadvertence (see § 8.29), denial of the application
should not necessarily preclude the claimant from maintaining his action against the

27 ⁵ California Government Code section 911.2(a) imposes a six-month time limit on filing
28 claims against the state government for personal injury.

1 public employee. To hold to the contrary would leave claimant's initial ignorance of the
2 tortfeasor's public employment status as the real basis for his inability to litigate his
3 cause of action. This is precisely the kind of unjust result the legislature was seeking to
4 prevent. *But an application to present the late claim and its denial should be required*
5 *at least."*

6 *Moore*, 65 Cal. App. 3d at 902 fn. 5 (emphasis added). The final line of the footnote plainly states
7 that a late claim must still be made on the public entity and that if it is denied, section 950.4 can
8 provide a justification for excusing the denied claim. With this context, it appears that *Moore* holds
9 only that section 950.4 provides an excuse for suit despite a denied late claim. This generally
10 squares with the claims statute's overarching purpose of providing timely notice to a public entity of
11 claims against it.

12 Notwithstanding the *Moore* decision and the policy at stake, the statute is clear: a cause of
13 action is not barred by the provision requiring a plaintiff to file a claim (section 950.2) if the plaintiff
14 lacked knowledge or reason to know of the specific entity that harmed it during the six-month claim
15 presentation time frame. This may lead to an absurd result where a plaintiff discovers the public
16 entity responsible for their injury a day after the six-month period and is nonetheless free from ever
17 filing a claim against the entity, but this is the result compelled by the text. At trial, the plaintiffs
18 must prove that their investigation (which appears to have consisted of reading the police report)
19 was reasonably diligent. If they succeed, their failure to ever file a claim with the city of San Jose
20 will be excused.⁶

21 **D. The Children's Claims**

22 Finally, Agents Albin and Rubino move for summary judgment as to the claims asserted by
23 the children, Daniel Farias and Lauren and Nicole Watson. While the plaintiffs' complaint does not
24 clearly state which plaintiffs assert which claims, fairly read, the children do not assert a claim
25 against Agent Rubino. The only claim asserted by the children against Agent Albin is their claim
26 for intentional or negligent infliction of emotional distress.

27 ⁶ While portions of this analysis track some of the argument in plaintiffs' unsolicited letter
28 brief of April 14, 2008 (docket no. 115), the court did not consider plaintiffs' letter brief. The court
did not grant leave to submit additional briefing and therefore sustains Agent Albin's objection
(docket no. 118) to the letter brief.

1 Agent Albin argues that because he had no contact with the children, he cannot be liable for
2 inflicting emotional distress upon them. California law does not require physical contact in this type
3 of situation. *See, e.g., Carrasco v. City of Vallejo*, 2001 WL 34098655, at *8 (E.D. Cal. 2001)
4 (mother's emotional distress claim arose from witnessing her son's beating by police). Accordingly,
5 Agent Albin's motion for summary judgment is denied.

6 III. ORDER

7 For the foregoing reasons, the court denies the motions for summary judgment.

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9 DATED: 4/16/2008



10 RONALD M. WHYTE
11 United States District Judge
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13 **Dated:** 4/16/2008

TSF
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